IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19140 of 2015

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1. Shailendra Singh Son of Sri Shyam Narayan Singh resident of village + P.O. Kanchanpur, P.S. Sasaram, District - Rohtas (Sasaram)

.... Petitioner/s

Versus

1. The State of Bihar through its Secretary, Department of Registration, Govt. of Bihar, Patna
2. The Commissioner, Patna Division, Patna
3. The Joint Commissioner, Departmental Enquiry, Patna Division, Patna
4. The Collector, Rohtas at Sasaram
5. The Deputy Collector (Mundrank), District Collectoriate, Sasaram
6. The Sub - Registrar, Registrar office, Sasaram (Rohtas)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghunandan Kumar Singh, Adv.

For the Respondent/s : Mr. Rishi Raj Sinha, SC19

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-12-2016

A counter affidavit is filed. Let it be kept on record.

Heard Mr. Raghunandan Prasad Singh learned counsel for the petitioner and Mr. Rishi Raj Sinha, S.C.19 for the State.

With the consent of the parties, the writ petition is heard with the view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 19.10.2015 passed by the Joint Commissioner, Departmental Enquiry, Patna Division, Patna whereby the application of the petitioner for refund of the amount deposited by way of stamp duty through challan, has been rejected inter alia in reference to the provisions of the Bihar Stamp

(Refund of Amount of Stamp Duty by Bank Challan) Rules, 2008 (hereinafter referred to as the 'Refund Rules') which according to the respondents prohibits a refund beyond one year of deposit. Copy of the order is impugned at Annexure-5 to the writ petition.

It is the contention of Mr. Singh learned counsel appearing for the petitioner in reference to an application filed by the petitioner before the Collector, Rohtas on 27.8.2015 praying for refund of the stamp duty deposited vide Challan No. 38 dated 4.9.2014, a copy of which is enclosed as Annexure-1 that the prayer of the petitioner was rejected by the Collector, Rohtas vide order passed on 10.9.2015 present at Annexure-3 on grounds that the jurisdiction to order for a refund of stamp duty deposited through challan beyond six months of the deposit, vested in the Divisional Commissioner. He submits that this order of the Collector , Rohtas was received by the petitioner only on 30.9.2015 which is confirmed from the details present at page 14 of Annexure-3 series and soon thereafter that the petitioner filed his application on 1.10.2015 before the Divisional Commissioner who has mechanically rejected the prayer vide the impugned order dated 19.10.2015. According to Mr. Singh there was no delay on the part of the petitioner to seek his refund which is within the time prescribed under Sections 49 and 50 of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act').

The arguments of Mr. Singh is contested by Mr. Sinha learned Standing Counsel in reference to the provisions of 'the Refund Rules' to submit that the rules have been framed by the State Government in exercise of powers vested under Sections 75 and 76 of 'the Act' and the rules while vesting jurisdiction in the Collector to order for refund of a deposit within six months of an application so made, shifts the jurisdiction with the Commissioner on expiry of six months of deposit. He thus submits that since the application filed by the petitioner before the Collector and the Divisional Commissioner was after the expiry of the limitation so prescribed under Rule 2(3) and(4) of the 'Refund Rules', it has rightly been rejected by the Collector. He submits that the Rule 2(5) further bars a refund of the stamp duty deposited through challan which is to be treated as non- judicial stamp, after lapse of one year.

I have heard learned counsel for the parties and I have perused the records.

There is no dispute on facts. The stamp duty in question indisputably was deposited on 4.9.2014 as manifest from Annexure-1. An application for its refund was filed by the petitioner on 27.8.2015 vide Annexure-2 series before the Collector, Rohtas, who rejected the prayer vide order dated 10.9.2015 in reference to Rule 2(3) of the 'Refund Rules'. The application filed by the petitioner before the

Commissioner at Annexure-4 has also been rejected by the order dated 19.10.2015 impugned at Annexure-5 in reference to Rule 2(4) of the 'Refund Rules'. Rule 2(5) of the 'Refund Rules' bars a refund of the stamp duty deposited through challan as non judicial stamp under Sections 49 and 50 of 'the Act' after lapse of one year. The issue would be whether the application of the petitioner before the Collector, was capable of rejection.

Conformingly, 'the Refund Rules' in question has been framed in exercise of powers vested in the State Government under Sections 75 and 76 of 'the Act' and deals with refund of stamp duty deposited through bank challan as non judicial stamp under Sections 49 and 50 of 'the Act'. Interestingly, while Section 49 of 'the Act' vests jurisdiction in the Collector to consider the issue relatable to allowance on spoiled stamps as well as claim on refund, the limitation to seek such relief is governed by Section 50(3) which prescribes a period of one year from the date of purchase of a stamp paper. The jurisdiction for passing order on refund is vested in the Collector under Section 50(4) of 'the Act'.

Apparently a jurisdiction vested in the Collector to order for refund by a depositor under Section 50(3) and (4) of 'the Act' is sought to be curtailed under the 'Refund rules' which is undisputably impermissible for the 'Refund rules' framed under Section 49 and 50 of ‘the Act’ have to be in consonance with the provisions of ‘the Act’ and not in conflict of the same. Since ‘the Act’ itself vests jurisdiction in the Collector to order for refund within a period of one year of deposit certainly, this period can not be reduced by the State Government under the rule making power. The provisions underlying the ‘Refund Rules’ have to be read along side Sections 49 and 50 of ‘the Act’ to be given a harmonious interpretation and not which render the provision itself nugatory.

Another aspect of the matter which probably answers the incongruous situation, is that whereas the ‘Refund Rules’ were framed by the State Government on 17.3.2008, Section 50 of ‘the Act’ was amended vide Bihar Finance Act, 2008 on 2.4.2008 i.e. after the ‘Refund Rules’ were framed.

In the circumstances discussed; it is obvious that the period provided under the amended provisions of Section 50 would prevail over the period prescribed under ‘the Refund Rules’.

In view of the legal position existing, the application filed by the petitioner seeking refund of the stamp duty vide Annexure-2 before the Collector, Rohtas on 27.8.2015 having been filed within one year of the deposit of the stamp duty by challan on 4.9.2014 suffered no infirmity and should not have rejected by the Collector.

For the reasons and discussions hereinabove, the order of rejection of the refund of stamp duty by the Collector vide order dated 10.9.2015 impugned at Annexure-3 together with the order of the Commissioner dated 19.10.2015 impugned at Annexure 5 cannot be upheld and are accordingly quashed and set aside. Since indisputably, the application for refund had been made by the petitioner before the Collector, Rohtas on 27.8.2015 i.e. within a period of one year from the date of deposit of the stamp duty through challan at Annexure-1, he was fully entitled to the refund and the Collector, Rohtas accordingly is directed to refund the stamp duty to the petitioner within six weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	23.12.16
Transmission Date	